



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
ANDREW J. KOSSACK

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

October 14, 2011

Mr. John P. Bushemi
Burke Constanza and Carberry LLP
9191 Broadway
Merrillville, Indiana 46410
Via email: bushemi@bcclegal.com

Re: *Informal Inquiry 11-INF-59; Lake County Public Safety Commission*

Dear Mr. Bushemi:

This is in response to your informal inquiry regarding the Lake County Public Safety Commission (“Commission”).¹ Pursuant to Ind. Code § 5-14-4-10(5), I issue the following opinion in response to your inquiry. My opinion is based on applicable provisions of the Open Door Law (“ODL”), I.C. § 5-14-1.5-1 *et seq.*

Your primary inquiry is whether the committees formed by the Commission would be considered governing bodies of a public agency and be required to comply with the requirements of the ODL. In addition, you seek guidance on whether an inspection done by either the Commission or one of its committees of other county emergency centers would be considered a “meeting” according to the ODL.

BACKGROUND

By state law, all Indiana counties must consolidate their 911 emergency response systems by December 31, 2014.² To that end, in Lake County the Commission was formed, which consisted of one Lake County Commissioner, one Lake County Council member, Lake County Sheriff John Buncich, and representatives from eighteen (18) cities and towns in Lake County. There is no dispute that the Commission is a public

¹ Throughout the opinion if I am unaware of the official title of a commission, committee, or director, I will substitute an appropriate title in its place. Should a mistaken title or factual statement affect the analysis, please do not hesitate to contact me.

² In addition to our conversations regarding the issue, I have gathered additional factual detail from articles in the *Northwest Times* regarding the Commission, specifically a September 16, 2011 article titled “Hurdles Ahead for Lake County 911 Merger, Sheriff Warns” found at the following URL: http://www.nwitimes.com/news/local/lake/schererville/article_3f894af2-1693-5877-a6ac-67c1e30f9a1e.html

agency pursuant to the ODL and has fully complied with all of the requirements of the ODL since its inception. At one of the initial meetings of the Commission, it was decided that five (5) committees (“Committees”) would be formed to deal with different aspects of consolidating the emergency response systems of Lake County. The Committees were formed on a volunteer basis, comprised strictly of those twenty-one (21) members of the Commission.

On three separate occasions after the Commission was formed, members have conducted an inspection of other county emergency centers. No more than five (5) members of the Commission were part of any particular inspection. As part of the inspection, members conducted a tour of the facilities and spoke with other county leaders regarding their consolidation efforts.

ANALYSIS

It is the intent of the ODL that the official action of public agencies be conducted and taken openly, unless otherwise expressly provided by statute, in order that the people may be fully informed. *See* I.C. § 5-14-1.5-1. Except as provided in section 6.1 of the ODL, all meetings of the governing bodies of public agencies must be open at all times for the purpose of permitting members of the public to observe and record them. *See* I.C. § 5-14-1.5-3(a).

The initial issue presented is whether the Committees formed by the Commission would be considered governing bodies and thus be required to comply with the requirements of the ODL. The ODL defines a governing body as:

- (b) "Governing body" means two (2) or more individuals who are:
 - (1) a public agency that:
 - (A) is a board, a commission, an authority, a council, a committee, a body, or other entity; and
 - (B) takes official action on public business;
 - (2) the board, commission, council, or other body of a public agency which takes official action upon public business; or
 - (3) any committee appointed directly by the governing body or its presiding officer to which authority to take official action upon public business has been delegated. An agent or agents appointed by the governing body to conduct collective bargaining on behalf of the governing body does not constitute a governing body for purposes of this chapter. *See* I.C. § 5-14-1.5-2(b)

Subsection (1) would not be applicable as the Committees by themselves would not be considered a public agency. The relevant definition of the term "public agency" is: Any advisory commission, committee, or body created by statute, ordinance, or executive

order to advise the governing body of a public agency, except medical staffs or the committees of any such staff. IC 5-14-1.5-2(a)(5). You have provided that the Committees were not created by statute, ordinance, or executive order. Further, the Committees are not audited by the State Board of Accounts. As such, it is my opinion that the Committees could not be considered a governing body pursuant to subsection (1).

Subsection (2) provides that a governing body is any "board, commission, council, or other body of a public agency which takes official action upon public business. . ." See I.C. § 5-14-1.5-2(b)(2). The Committees were not created by any statute, ordinance, or regulation governing the Commission or by administrative rule governing the Commission. See *Opinions of the Public Access Counselor 03-FC-87*. The Committees were formed out of convenience to assist the Commission in complying with the requirements of the state law regarding emergency responses systems. Therefore, it is my opinion that the subsection (2) would not be applicable.

Subsection (3) provides that any committee appointed directly by the governing body or its presiding officer to which authority to take official action upon public business has been delegated would be considered a governing body. See I.C. § 5-14-1.5-2(b)(3). Here, each Committee was comprised of Commission members. Each Committee member volunteered to serve or elected to serve. Neither the Commission, its presiding officer, nor any other entity directly appointed the Committees. See *Opinion of the Public Access Counselor 08-FC-21*. Accordingly, it is my opinion that the Committees would not be considered a governing body pursuant to subsection (3).

In sum, it is my opinion that the Committees would not qualify as a governing body pursuant as to any section of I.C. § 5-14-1.5-2(b) and would not be required to comply with the ODL. You have indicated that each Committee consists of approximately five (5) individuals, each being a member of the Commission. If for any reason, a majority of the Commission would be in attendance at a Committee meeting, then the Commission would be required to post notice of a public meeting. A meeting for the purpose of the ODL is defined as a "gathering of a majority of the governing body of a public agency for the purpose of taking official action upon public business." I. C. § 5-14-1.5-2(c). Official action' is defined broadly to include receiving information, deliberating, make recommendations, establishing policy, making decisions, or taking final action. See I.C. §5-14-1.5-2(d). As such, if a majority of the Commission would attend a Committee meeting, it would be taking "Official action" by simply receiving information.

As to your second inquiry, as I have provided that it is my opinion that the Committees would not be considered governing bodies pursuant to the ODL, the remaining issue is whether a Commission meeting occurred when five (5) of its members toured various other county emergency response centers. A meeting for the purpose of the ODL is defined as a "gathering of a majority of the governing body of a public agency for the purpose of taking official action upon public business." I. C. § 5-14-1.5-2(c). There are three elements to this definition: a majority, official action and public business. If all three elements are met, the requirements of the ODL apply, including providing notice of the meeting and preparing memoranda. As you have indicated that

the Commission is comprised of twenty-one (21) members, thus a majority of the Commission was not in attendance at any of the inspections. Therefore, it is my opinion that the Commission did not convene a meeting for the purposes of the ODL in taking a tour of other county emergency response centers when only five (5) members were in attendance.

I would also note that I.C. § 5-14-1.5-2(c)(2) provides that a meeting for the purposes of the ODL does not include any on-site inspection of any project, program, or facilities of applicants for incentives or assistance from the traveling body. If the inspections conducted by the Commission referenced in the preceding paragraph could be accurately defined by subsection (c)(2), then for the purposes of the ODL it would not be considered a meeting. *See Opinion of the Public Access Counselor 09-FC-61 and 11-FC-37.*

If I can be of additional assistance, please do not hesitate to contact me.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is written in a cursive style with a large initial "J" and a long horizontal stroke.

Joseph B. Hoage
Public Access Counselor